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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES OF AMERICA,  
9  
10 Plaintiff/Respondent,

No. CR 11-97 CRB

11 v.

**ORDER ON LIMITED REMAND**

12 CUONG MACH BINH TIEU,  
13 Defendant/Petitioner.  
14 \_\_\_\_\_/

15 On April 25, 2016, the Ninth Circuit remanded this case to this Court for the limited  
16 purpose of determining whether Petitioner Cuong Mach Binh Tieu's March 10, 2016 Notice  
17 of Appeal (dkt. 791) is a timely motion to reopen pursuant to Federal Rule of Appellate  
18 Procedure 4(a)(6), and, if not, whether it is nonetheless timely because this Court did not  
19 enter a separate judgment under Rule 58(a). See USCA Order (dkt. 795).

20 This Court finds that the Notice of Appeal is not a timely motion to reopen, as the  
21 Court served the Court's December 4, 2015 final order on January 27, 2016, and Tieu did not  
22 file his Notice of Appeal until about six weeks later. See Fed. R. App. 4(a)(6). Nonetheless,  
23 the Court finds that the Notice of Appeal is timely. The Court's December 4, 2015 final  
24 order suggested that a separate judgment was forthcoming under Rule 58, but none was. See  
25 Order re 2255 (dkt. 786) at 12. Under the circumstances, Tieu had 150 days to appeal, and  
26 his Notice of Appeal was filed within those 150 days. See Peng v. Penghu, 335 F.3d 970,

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975 & n.4 (9th Cir. 2003); Notice of Appeal.

**IT IS SO ORDERED.**

Dated: April 26, 2016



CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE